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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 26

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE CALIFORNIA COMPANY AND ALLEN L. LOBRANO, RESPONDENTS.

PRELIMINARY STATEMENT.

The California Company and Allen L. Lobrano are the named defendants in the State Court litigation which attacks the title of the United States and seeks to evict these named defendants from property which they possess

for the United States as its mineral lessees. Because the rights of The California Company and Allen L. Lobrano are very valuable, and will be directly affected by the decision of this Court, these parties desire to protect their interests by independent brief. Moreover, petitioner's case is founded upon erroneous contentions as to Louisiana law, and an independent brief by Louisiana practitioners is deemed advisable on that account also.

SUMMARY OF ARGUMENT.

I. The Plaquemines Parish suit, though nominally against the United States' mineral lessees, is actually against the United States. Leiter there claims to own the disputed mineral rights by a reservation against the United States and it asks the State Court to decree that its title is good and the United States' title is bad. Under Louisiana law, these mineral lessees stand in the shoes of the United States. Their possession is, in State law, the possession of the United States and the challenge of the State Court complaint runs directly to the United States itself.

The Louisiana statutes and decisions are clear that the State Court litigation is against the United States. The State holdings are that the lessor is the only one who can stand in judgment on the issue of title, since a lessee does not claim title in itself and holds possession only for, and under, its lessor. The lower Federal decisions agree.

II. The threat by the State Court suit to the interests of the United States is direct and immediate. At the hearing in the District Court more than two years ago there were eighty producing oil wells on the property and the United States had already received more than

$3,500,000.00 in royalty. This oil field is operated on a gas injection method whereby sub-surface pressures are controlled so as to achieve maximum production. Even a slight and temporary interruption in this program would result in serious loss of recoverable oil and whole segments of the underground reservoir might be damaged irretrievably. Due to the complicated nature of the operation, control could not be shifted from the United States' mineral lessees even to equally responsible operators without serious and irreparable damage. Any shut-down of the wells, no matter how brief, would result in permanent loss of recoverable oil. Also, the hazards of oil and gas production are such that unless the most careful and prudent practices are followed in day-to-day operations extensive and permanent loss of recoverable oil will result. All these damages, from their very nature, would be difficult to establish with precision, and the United States would have no reasonable expectation of collecting them from petitioner.

III. The title of the United States to the disputed mineral rights is good and clear. The United States acquired the property under contract dated March 14, 1935, followed by deed dated December 21, 1938. Leiter's mineral reservation against the United States, set forth in those instruments, expired by its express terms on April 1, 1945. That reservation said that the reserved rights might be extended only if Leiter conducted mineral operations "to commercial advantage" within the original term, and any such extensions would be limited to twenty-five acres around each producing or operating well. Other significant requirements and limitations were imposed. Leiter conducted no operations whatsoever in compliance with these requirements. Instead, Leiter avers that the re-

served mineral rights, notwithstanding the contractual requirements and limitations, became perpetually vested in it by subsequent Louisiana Statute, Act 315 of 1940. But that Statute was concerned solely with a statute of limitation, or prescription, under Louisiana law, whereby mineral rights, no matter what their contractual terms, must be exercised every ten years to stay alive. The right to take the minerals in Louisiana constitutes a mere servitude or easement, which becomes lost by ten years non-user. Louisiana law gives absolute freedom to contract with respect to the terms of mineral reservations and all such provisions are enforced as written subject only to this statute of limitation, or prescription, which requires that the rights be exercised at least once every ten years. Act 315 of 1940 did not attempt to alter or strike down contractual requirements and limitations such as those in the United States' contract with Leiter; by its plain wording, this State Law does nothing more than prohibit the legal statute of limitation, or prescription, from running in favor of the United States.

The United States District Court for the Western District of Louisiana has upheld the position of the United States under a comparable reservation. *Hickman v. United States*, 135 F. Supp. 919, 140 F. Supp. 759.

IV. The injunction below was a proper remedy. The restrictions of Section 2283 of the Judicial Code do not apply against the United States. *United States v. United Mine Workers*, 330 U. S. 258. Leiter's position to the contrary is wholly predicated on *Amalgamated C. W. of America v. Richman Bros.*, 348 U. S. 511, but in that case the United States was neither plaintiff nor a party. Since the Plaquemines Parish Court had no power to en-

tertain a suit against the United States, the Court below, on the filing of the complaint by the United States, became the only court with proper jurisdiction to determine the controversy. Petitioner necessarily admits this when it concedes the State Court could not render a judgment that would be *res judicata* on the rights of the United States (Brief, p. 30).

The injunction below was authorized by express declaration in *United States v. Lee*, 106 U. S. 196, and was consistent with the injunction more recently sanctioned by this Court in *Land v. Dollar*, 341 U. S. 737.

Whereas Leiter urges that principles of comity between state and Federal courts should favor relinquishment of jurisdiction to the State Court, these rules of comity have never been applied except where the choice of jurisdiction between state and Federal courts was otherwise equal. These rules of comity, even between private parties, would not apply here since the State Court has never undertaken to exercise possession or control over the property. *Mandeville v. Canterbury*, 318 U. S. 47. And, in any event, the United States Courts necessarily have jurisdiction to protect the property of the United States.

Nor is Leiter correct in arguing that the "doctrine of abstention" in favor of state courts, where the constitutionality of state statutes is attacked, applies. Louisiana Act 315 of 1940, to which Leiter points, has no bearing in this case. Such statute did not purport to affect, much less strike down and annul, the provisions of the United States' purchase agreement, and Leiter's attempt to apply the statute is entirely without substance.

If the State Courts agreed the statute has no application, Leiter's whole claim is without merit. If, on the other hand, the State Courts were to adopt the impossible interpretation proposed by Leiter, the statute would be unconstitutional. Either way, Leiter could not be successful. This case is the reverse of the "doctrine of abstention" cases. There, state courts were given first opportunity to interpret so as to eliminate constitutional questions. Here, petitioner asks the State Courts be given this first opportunity so as to create constitutional questions. No purpose would be served by sending this case to the State Courts solely to see if they might render an unconstitutional interpretation.

United States v. Bank of New York & Trust Company, 296 U. S. 463, heavily relied on by Leiter, did not involve a suit against the United States. Long before any claim by the United States arose, the funds there in dispute had been in possession of the state court authorities and were subject to their actual administration and control. But down in Plaquemines Parish the State Court has never taken the property into custody or made any move to do so. Also, in *Bank of New York* the State Superintendent of Insurance was attempting to disburse the funds to their rightful owners and was not denying the rights of anyone, particularly the United States. Under those circumstances, the liquidation proceedings were held not to be a suit against the United States. On the other hand, in the case at bar Leiter is endeavoring to wrest away from the United States specific property which is now, and for many years has been, in the exclusive possession of the United States.

Leiter's contention that in reliance on the *Bank of New York* case the United States might "intervene" in the State Court, without becoming a "defendant", is at odds with the fact that the suit there is already against the United States, and the title and possession attacked in the State Court are the title and possession of the United States. Merely calling the United States an intervenor instead of a defendant cannot be made the pretext for compelling the United States to litigate the title to any of its properties in any of the state courts without its consent.

Finally, the sovereignty of the United States under our Federal system of government requires that the title of the United States to the national properties be litigated in and, where necessary, protected by the United States Courts. The interests of the United States could not be adequately protected if the hands of the United States were tied in the United States Courts while its title and possession were litigated in the forum of another sovereign where it cannot be made a party.

Leiter Minerals has no investment at stake. Leiter has been out of possession for many years while the property was being developed by the United States' mineral lessees. The United States and its mineral lessees have everything to lose if they should be temporarily evicted only to be restored to possession at a later date. No final and binding decision on the title of the United States can be made by the State Court. Leiter concedes this when it acknowledges that any State Court decree in Plaquemines Parish "would not have the effect of *res judicata* against the Government". (Petitioner's brief, p. 30). Con-

tinuation of the State Court case can accomplish nothing and the injunction below was necessary to preserve the *status quo* until the controversy can be settled in the only courts with the power to make a final decision binding on all interested parties.

I.

THE PLAQUEMINES PARISH SUIT AGAINST THE UNITED STATES' MINERAL LESSEES IS A SUIT AGAINST THE UNITED STATES.

The complaint asks the State Court to adjudicate the title of the United States and the State Court would be required by Louisiana law to do so.

In its State Court complaint Leiter Minerals claims to own the disputed mineral rights adversely to the United States: it avers that the defendant mineral lessees of the United States are, and for some time have been, producing from the property without right oil and gas in large quantities; it declares that the mineral rights in the property belong to it by reservation against the United States made December 21, 1938 and later rendered "imprescriptible" by Louisiana Act 315 of 1940; and it avers that the United States acquired the property solely for a game refuge without paying any separate consideration for the mineral rights. The prayer of such State Court complaint is that Leiter Minerals be decreed the "fee simple, true and lawful owner" of the disputed mineral rights; that the defendant mineral lessees of the United States be ordered to deliver possession; and that plaintiff, Leiter, there have a money judgment for the value of all of the oil and gas that have been removed. (Ex. U. S. 15, R. 101, 50).

Petitioner, Leiter Minerals, concedes that its State Court suit, with the above allegations and prayer, is a Louisiana petitory action. (Brief, p. 5). Louisiana has different forms of actions which must be used in accordance with the circumstance of possession. A petitory action is an action to try title brought by an adverse claimant out of possession against a defendant in possession. The one, essential requirement of this form of action is that the plaintiff establish good title. Article 44 of the Louisiana Code of Practice so provides:

> "The plaintiff in an action of revendication must make out his title, otherwise the possessor, whoever he be, shall be discharged from the demand."

The Louisiana decisions enforce this requirement, and insist that the plaintiff in every petitory action not only allege, but prove, good title. *E. g., Cupples v. Harris*, 202 La. 336, 11 So. (2d) 609; *Smith v. Chappell*, 177 La. 311, 148 So. 242. It would be impossible under Louisiana law for the State Court to give Leiter any relief whatsoever without first deciding the title issue adversely to the United States. *Byrne v. Hebert*, 51 La. Ann. 548, 25 So. 586.

In *Stanley v. Schwalby*, 162 U. S. 255, a State Court suit was held to be against the United States for the reason that the complaint, though nominally against certain individuals, sought an adjudication on the title of the United States. This Court stated that the judgment thereon "was directly against the United States and against their property, and not merely against their officers." 162 U. S. at p. 272. And the rule so laid down was most re-

cently approved in *Larson v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682, where it was said:

> "The request for an adjudication of the validity of the sale was thus, even in form, a request for an adjudication against the sovereign. Such a declaration of the rights of the respondent vis-a-vis the United States would clearly have been beyond the Court's jurisdiction. See Stanley v. Schwalby, 162 U. S. 255, 40 L. Ed. 960, 16 S. Ct. 754 (1896)." 337 U. S. at p. 689, fn. 9.

The State Court defendants are sued in their capacity of mineral lessees of the United States, and the possession of these mineral lessees is, in State law, the possession of the United States.

In the State Court, The California Company and Allen L. Lobrano are, by specific allegation, sued in their capacity of mineral lessees of the United States. (Art. 5, Ex. U. S. 15, R. 101, 50). These lessees are called to answer for doing those very acts and things which the United States authorized them to do. In Louisiana, an oil and gas lessee has no separate estate from the lessor but merely a contractual right to explore for minerals in return for the payment of rent (royalty); and the rule of the Louisiana Civil Code on ordinary farm leases are applied by the courts to oil and gas leases. *Dixon v. American Liberty Oil Co.*, 226 La. 911, 922, 77 So. (2d) 533, 537; *Arnold v. Sun Oil Co.*, 218 La. 50, 147, 48 So. (2d) 369, 402; *Coyle v. North American Oil Consolidated*, 201 La. 99, 114, 9 So. (2d) 473, 478. The possession of lessees is, under Louisiana law, possession of and for the lessor,

and such lessees can acquire no adverse title to the lessor. *Ideal Savings & Homestead Ass'n. v. Gould*, 163 La. 442, 451, 112 So. 40, 43; *Campbell v. Hart*, 118 La. 871, 882, 43 So. 533, 536. This rule is applicable to mineral lessees as well as farm lessees. *Lawrence v. Sun Oil Co.*, 166 F. (2d) 466, 470 (C. A. 5); *Allison v. Maroun*, 193 La. 286, 293, 190 So. 408, 410.

Inescapably, therefore, the challenge laid down by the State Court complaint also runs directly to the United States as the party in possession through its mineral lessees.

Under the Louisiana statutes and decisions the State Court litigation is against the United States. The Federal decisions from Louisiana and other states are unanimous to the same result.

Article 43 of the Louisiana Code of Practice provides:

> "The petitory action, or one by which real property; or any immovable right to such property may be subjected, is claimed, must be brought against the person, who is in the actual possession of the immovable, even if the person having the possession be only the farmer or lessee.
>
> "But if the farmer or lessee of a real estate be sued for that cause of action, he must declare to the plaintiff the name and residence of his lessor, who shall be made a party to the suit, if he reside in the State, or is represented therein,

> **and who must defend it in the place of the tenant,** who shall be discharged from the suit." (Emphasis added).

This article shows the suit is against the lessor by requiring that he come in and defend the suit. And apart from the article, the Louisiana decisions hold that the lessor is the only one who can stand in judgment as to title. In *Pino v. Dufour*, 174 La. 227, 231, 140 So. 31, 32, the Louisiana Supreme Court said, in regard to a title suit against a lessee, that the issue of title "must be determined contradictorily with the adverse claimant of title", the lessor; in *Desoto's Heirs v. Standard Oil Co.*, 139 La. 965, 966, 72 So. 695, 696, the Louisiana Supreme Court said that it was incumbent upon the adverse claimants "to cite the lessors for litigating the issue of title, which these lessors alone are qualified to litigate"; in *Jewell v. DeBlanc*, 110 La. 810, 821, 34 So. 787, 791, the Louisiana Supreme Court said that a tenant was "not competent to stand in judgment upon the issue of ownership" and that the lessor was "the actual defendant"; and in *Terrett v. Brossett*, 34 So. (2d) 671, 672, the Louisiana Court of Appeal has also held the lessor a necessary party to a title dispute.

Against these authorities, Leiter relies on *Dreux v. Kennedy*, 12 Rob. (La.) 489, decided in 1846. While that old case permitted a petitory action against persons in charge of the former United States mint at New Orleans, such result is not the law of Louisiana today. The cases cited above make this clear, and the following history makes it even clearer. *Dreux v. Kennedy* was decided by the Louisiana Court in reliance upon its earlier decision

in *Plummer v. Schlatre*, 4 Rob. (La.) 29, which had held that a petitory action could be maintained against a lessee standing alone whenever the lessor resided out of the State and was not amenable to suit. But this holding of *Plummer v. Schlatre* was subsequently and permanently rejected in *Young v. Chamberlin, 15 La. Ann. 454*, and *Byrne v. Hebert*, 51 La. Ann. 548, 25 So. 586; and when *Plummer v. Schlatre* fell, *Dreux v. Kennedy* necessarily fell with it. The reasoning of these later cases, and especially of *Byrne v. Hebert*, is wholly incompatible with *Dreux v. Kennedy:*

> ". . . We know of no law authorizing a lessee as such to stand in judgment on a question of title on behalf of his lessor, whether the latter be a resident of the State or an absentee; in either case he should be made a party to the suit—if present or represented he should be made a party either personally or through his authorized representative—if absent, by a curator ad hoc, under Articles 116 and 963 of the Code of Practice." 51 La. Ann. at p. 556; 25 So. at p. 589.

In *Lawrence v. Sun Oil Co.*, 166 F. (2d) 466, the Court of Appeals for the Fifth Circuit held that just such a Louisiana petitory action as Leiter's is in fact a suit against the mineral lessor, though brought solely against the lessee; and the Court of Appeals dismissed that case for want of jurisdiction over the lessor. The reasoning employed by Judge Lee (of the Louisiana Bar) was as follows:

> "A petitory action has for its purpose not only the establishment of title by the owner out of

possession but through court decree the obtaining of possession. The lessor, therefore, is vitally interested not only in maintaining his title, but in maintaining his possession. And as the lessor through his tenant is the real possessor, he is the proper one to be heard, and under the codal article must be brought in and given that opportunity. Notwithstanding Act No. 205 of 1938, codal articles dealing with ordinary leases still apply to oil, gas and mineral leases, in proper cases. Tyson v. Surf Oil Co., supra." 166 F. (2d) at p, 470.

Similar reasoning was employed by Judge Borah (likewise of the Louisiana bar) in writing the decision of the Court of Appeals in the instant case:

> "Obviously the controversy as to title is between the appellant and the United States, not between the appellant and the Government's mineral lessees, and from this it follows that the United States is an indispensable party. The appellant can obtain effective relief with respect to title only against it." 224 F. (2d) at p. 384.

Other circuits have equally held that lessors are indispensable parties to title suits against lessees. *Skeen v. Lynch*, 48 F. (2d) 1044 (C. C. A. 10), cert. den., 284 U. S. 633; *State of Washington v. U. S.*, 87 F. (2d) 421 (C. C. A. 9). *Skeen v. Lynch* is comparable to the case at bar, since it dismissed, for lack of jurisdiction, a title suit against mineral licensees of the United States.

Whereas Leiter urged in its supplemental brief on petition for certiorari, and still urges, that the Court

of Appeals for the Fifth Circuit, in its February 2nd, 1956 decision of *Gulf Refining Company v. Price*, reached a result inconsistent with the foregoing authorities, it is no longer necessary to consider that contention. That Court, on April 6th, 1956, subsequently to the grant of certiorari, withdrew completely its February 2nd opinion in the *Price* case and substituted a wholly new opinion in which the following statement is made:

> "... It cannot be said that where defendants are not sued as and do not appear as lessees, that the rights granted by Art. 43 of La. Code of Practice can be availed of, or that any rights of any lessor can be affected if the litigation involves none of its lessees. (See Lawrence v. Sun Oil Co., 166 F. (2d) 466, for discussion of Art. 43 and indispensable parties.)" 232 Fed. (2d) 25, 30.

This reference by the Court of Appeals to its prior decision in *Lawrence v. Sun Oil Co.*, discussed above, makes it clear that there has been no change in the views of the Fifth Circuit, consistent with the decisions in other circuits, that the lessor is the real defendant in, or an indispensable party to, a title action against its lessee.

That rule is further consistent with numerous decisions by this Court itself, in situations other than the lessor-lessee relationship, holding that the United States is an indispensable party to any action affecting its title or rights, and that all such suits fail for lack of jurisdiction. *Louisiana v. Garfield*, 211 U. S. 70; *State of Utah v. Work, Secretary of Interior*, 6 F. 2d 675, aff. 273 U. S. 649; *Arizona v. California*, 298 U. S. 558; *Mine Safety Appliances Co. v. Forrestal*, 326 U. S. 371.

II.

THE THREATENED TEMPORARY EVICTION OF THE UNITED STATES' MINERAL LESSEES IN PLAQUEMINES PARISH WOULD EFFECT PERMANENT AND IRREPARABLE DAMAGE TO THIS VERY VALUABLE MINERAL PROPERTY OF THE UNITED STATES.

Leiter asks the State Court to evict the United States' mineral lessees. This eviction, though it might be but temporary, would be certain to result in substantial and permanent damage, possibly even enormous damage, to the interests of the United States.

The value of the property rights at stake appears from the fact that, when the hearing was held in the District Court more than two years ago, the United States had already received royalty in excess of $3,500,000.00. Since this royalty is 12½%, total production then exceeded $28,000,000.00. Eighty producing oil and gas wells had been completed at an average cost of $160,000.00 apiece. (Ex. U. S. 13, R. 28, 49).

The nature of oil and gas production from this particular field is such that the wells of the United States' mineral lessees could not be shut down even temporarily without permanent loss of future production. That is especially true here because the wells are being produced under a gas injection method whereby subsurface pressures are controlled for maximum possible benefit. This gas injection method is a complicated endeavor, based upon studies and analyses of underground data obtained by the United States' mineral lessees in conducting their

drilling operations on the property. The evidence establishes that, under the circumstances, not even the most experienced and competent outside operator could be substituted for the United States' mineral lessees without permanent and irretrievable loss of recoverable oil. (Ex. U. S. 13, R. 28, 49).

Moreover, should there be any interruption of production from the wells situated on the property, oil wells now producing some water with the oil, of which there are a considerable number, would probably be flooded out beyond their ability to produce oil again. Oil would also be forced by water drive into the gas cap of the reservoir, causing loss of producible oil, and many wells would become sanded or loaded up with water, resulting at the least in expense and delay in placing them back on production. Also, oil wells situated in Main Pass of the Mississippi River, from which the United States does not receive any royalty, would, in the event of an interruption, effect drainage of oil from the United States' lands. (Ex. U. S. 13, R. 28, 49).

The proof further is that oil and gas operations are attended with numerous hazards and, unless the most careful and prudent practices are observed, wells may blow out or other things happen by which the capacity of the subsurface structure to produce can be extensively damaged and whole segments of the underground reservoir rendered worthless. (Ex. U. S. 13, R. 28, 49).

Leiter's suit in Plaquemines Parish threatens these consequences regardless of the final decision on the title of the United States. For, petitioner concedes that the

Plaquemines Parish case "would not have the effect of *res judicata* against the Government". (Brief, p. 30). Thus, if the United States' mineral lessees were temporarily evicted in Plaquemines Parish only to be restored to possession at a later date by the Federal Courts, the interim damage would have been needless. The United States would have no effective recourse against petitioner for these damages. The record shows petitioner's claim to these mineral rights was conveyed to it for stock, and obviously petitioner is wholly unable to respond in damages of the amount its suit threatens. Nor would these damages be of a readily ascertainable or provable type.

Petitioner's suggestion that the United States' mineral lessees might take a suspensive appeal in the State Court really begs the entire question. The jurisdiction of the United States Courts does not depend upon the presence or absence of the right to a supersedeas in the State Courts. But in any event, the suggestion is specious. A supersedeas bond under Louisiana law would be fixed at one and one-half times the values of the past production and the estimated future production during the course of the litigation, plus such additional amount as the State Court might in its discretion fix in order to secure against possible injury to the property. (Arts. 575 and 577 of the Louisiana Code of Practice). The value of the production to date and the probable value of future production are such that the bond to be required could well lie beyond the reach of the United States' mineral lessees. The cost of the bond alone would no doubt be counted in millions of dollars. Surely, the rights of the United States and the protection of its properties cannot be made to depend upon uncertain and vicarious action such as the posting of this bond.

III.

THE UNITED STATES HAS GOOD AND CLEAR TITLE TO THE DISPUTED MINERAL RIGHTS.

Leiter's mineral reservation expired by its own terms on April 1, 1945. Louisiana Act 315 of 1940 has no bearing in this case and does not purport to alter or strike down the United States' contract as contended by Leiter.

Although the merits of the controversy are not directly involved in this appeal, the granting of a preliminary injunction requires a *prima facie* showing, and this Court may wish to be satisfied the District Court did not abuse its discretion. That it did not will be evident from the following review of the facts and the issues on the merits.

The United States acquired the subject lands pursuant to a preliminary contract of sale and purchase between the executors and trustees of the Estate of Joseph Leiter and the United States dated March 14, 1935 (Ex. U. S. 1, R. 62, 46). The mineral reservation on which Leiter relies was set forth in that agreement. Thomas Leiter inherited the property from Joseph Leiter, and on October 24, 1938, executed an instrument ratifying the prior agreement of sale of March 14, 1935, in all respects. (Ex. U. S. 4, R. 73, 47). Then, on December 21, 1938, Thomas Leiter made a formal deed to the United States of America, which deed was executed in pursuance of, and reiterated the identical mineral reservation set forth in, the earlier agreement of March 14, 1935. (Ex. U. S. 5, R. 75, 47). That mineral reservation reads as follows:

"The Vendor reserves from this sale the right to mine and remove, or to grant to others the right to mine and remove, all oil, gas and other valuable minerals which may be deposited in or under said lands, and to remove any oil, gas or other valuable minerals from the premises; the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, to expire April 1, 1945, it being understood, however, that the vendors will pay to the United States of America, 5% of the gross proceeds received by them as royalties or otherwise from all oil or minerals so removed from in or under the aforedescribed lands, until such time as the vendors shall have paid to the United States of America, the sum of $25,000, being the purchase price paid by said United States of America for the aforedescribed properties.

"Provided, that if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event, the said right to mine shall be extended for a further period of five (5) years, but that the right so extended shall be limited to an area of twenty-five acres of land around each well or mine producing, and each well or mine being drilled or developed at time of first extension, to-wit: April 1, 1945.

"Provided, that this said right to mine as previously stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period, and

"Provided that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, **the right to mine shall terminate, and complete fee in the land become vested in the United States.**

"The reservation of the oil and mineral rights herein made for the original period of ten (10) years and for any extended period or periods in accordance with the above provisions shall not be affected by any subsequent conveyance of all or any of the aforementioned properties by the United States of America, but said mineral rights shall, subject to the conditions above set forth, remain vested in the vendors." (Emphasis added).

The original agreement of March 14, 1935 was executed just over ten years prior to April 1, 1945, which was the date the reserved mineral rights of Leiter were to terminate except as to any portions of such rights which might be extended if specific and stringent contractual conditions were fulfilled. Leiter's reserved mineral rights, both the contract of March 14, 1935 and the deed of December 21, 1938 said, would expire on April 1, 1945, unless:

(a) During the three year period immediately preceding the expiration date, mineral operations were conducted for an average of fifty days per year to **commercial advantage;**

(b) Even if that prerequisite were met, the mineral rights would be extended only as to individual 25-acre tracts around each producing or operating well at the expiration date;

(c) Any such extension of mineral rights on individual 25-acre tracts would be effective only for a five-year period; and

(d) If the mineral rights were so extended for a five-year period as to any 25-acre tracts around a producing or operating well, the extended mineral rights could be preserved for successive five-year periods on these twenty-five acre tracts only for so long a time as additional mineral operations were conducted in each five-year period for an average of fifty days per year.

The complaint of the United States herein sets forth that no drilling operations whatsoever were conducted by Thomas Leiter or by his transferee, Leiter Minerals, or by any other person in compliance with the foregoing requirements. Leiter makes no pretense of any attempt at compliance with those requirements. Instead, Leiter alleges in its State Court complaint that the mineral rights became vested in it forever, notwithstanding the contractual provisions of the reservation, by Louisiana Act 315 of 1940. But that statute, as will hereafter be shown, had no purpose to alter or strike down contractual provisions in United States acquisitions, nor would the Legisla-

ture of Louisiana have had the power to strike down such contractual elements had it chosen to make the attempt.

To demonstrate the purpose and effect of Louisiana Act 315 of 1940, it is necessary to review to some extent the law of Louisiana on mineral rights. Louisiana does not recognize ownership of minerals in place. Instead, the right to take the minerals is held to constitute a mere servitude or easement in respect to the land to which it applies. *Frost-Johnson Lumber Co. v. Salling's Heirs*, 150 La. 756, 863, 91 So. 207, 245; *Long-Bell Petroleum Co. v. Tritico*, 216 La. 426, 451, 43 So. (2d) 782, 791.

Articles 789 and 3546 of the Louisiana Civil Code have always provided a prescription, or statute of limitation, whereby servitudes lapse if a ten year period is permitted to expire without their having been exercised. Article 789 of the Louisiana Civil Code reads:

> "A right to servitude is extinguished by the non-usage of the same during ten years."

And Article 3546 similarly provides:

> "The rights of usufruct, use and habitation and servitudes are lost by nonuse for ten years".

For purposes of interruption of this prescription or limitation of ten years non-user, Louisiana law holds that the mineral servitude is exercised by the drilling of a well in an actual *bona fide* attempt at discovery of oil or gas, whether such well be productive of minerals or not. *Keebler v. Seubert*, 167 La. 901, 905, 120 So. 591, 592; *Frost Lumber Industries v. Republic Production Co.*, 112

F. (2d) 462 (C. C. A. 5), cert. den. 311 U. S. 676. The interruption by the drilling of a single dry well applies to the entire area of contiguous lands and starts a new period of ten years running as to all such area, no matter how large the area may be. *Lenard v. Shell Oil Co.*, 211 La. 265, 274, 29 So. (2d) 844, 847 (involving an 80,000 acre tract). Also, actual production from any part of a single contiguous area, no matter how large the area may be, keeps the legal prescription from running. *Patton v. Frost Lumber Industries*, 176 La. 916, 922, 147 So. 33, 35 (involving a 30,000 acre tract).

Such prescription of ten years non-user is a true prescription or statute of limitation that operates independently of any contractual provisions fixing the term for which mineral rights are sold or reserved. Thus, whether mineral rights are sold or reserved by contract for a period of fifteen years, twenty-five years, or in perpetuity, the legal prescription or limitation requires that the rights be exercised at least every ten years in order that they may continue to exist for their full contractual terms. This word "prescription" is civil law terminology for the ordinary common law statute of limitation. It is defined by Article 3457 of the Louisiana Civil Code as follows:

> "Prescription is a manner of acquiring the ownership of property, or discharging debts, by the effect of time, and under the conditions regulated by law."

Thus, "prescription" is a limitation provided by law and Article 3470 of the Louisiana Civil Code makes it clear that "prescription" connotes nothing more:

"There are no other prescriptions than those established by this Code and the statutes of this State now in force."

Such legal prescription or limitation of ten years non-user is an entirely different concept from the contractual stipulations on term contained in Leiter's mineral reservation against the United States. Whereas Leiter would have it appear that its reservation and the Louisiana law on prescription are the same, the fact is that had Leiter's reservation done nothing more than express the existing law on prescription, the drilling of a single well on this single, contiguous tract of land of 8711 acres would have served to maintain the mineral servitude on the entire tract and not just as to 25 acres around each producing or operating well. Moreover, under the Louisiana rules on prescription, the drilling of just one well would have resulted in a continuation of the servitude for a ten year period instead of for a five year period as stipulated in Leiter's contract. Nor would it have made a bit of difference under the Louisiana rules on prescription how many days of mineral operations were conducted in what periods, as was specifically required in Leiter's contract.

Perhaps the most striking variation from the Louisiana law of prescription was, however, the requirement in Leiter's reservation that Leiter actually operate the minerals to commercial advantage during the initial ten year reservation period. As heretofore pointed out, Louisiana law would have recognized an interruption of the legal prescription by the drilling of a single dry hole; yet, Leiter had not only to find oil and gas but to produce it to "commercial advantage" in order to preserve his rights.

The plain truth is that Thomas Leiter made a deal with the United States under which all of his reserved mineral rights would expire at the end of a fixed term except to the extent such term might be extended as to all or a portion of the rights by Leiter's doing certain things. He did none of those things and consequently never extended the stated term with respect to any of his reserved rights. Thomas Leiter's reservation became dead by contract on April 1, 1945 and he had nothing left to convey to petitioner, Leiter Minerals.

Article 821 of the Louisiana Civil Code gives the parties the absolute right to contract in respect to the duration of a servitude:

> "Servitudes are also extinguished when they have been established for a certain time only, or under a condition that in a certain event they shall cease, for when the time expires, or the event takes place, the servitude becomes extinguished of right."

Article 783(6) of the Louisiana Civil Code is to the same effect:

> "Servitudes are extinguished:
> "6. By the expiration of the time for which the servitude was granted, or by the happening of the dissolving condition attached to the servitude."

In *Hodges v. Norton*, 200 La. 614, 8 So. (2d) 618, the Louisiana Supreme Court expressly recognized the right to limit the duration of a mineral servitude by contract, and it differentiated between a contractual termination clause and the completely separate prescription of ten years non-user:

> "Thus, in the instant case, when A. J. Hodges released in favor of Selby the fifteen-year contractual limitation, his waiver, which inured to the benefit of Norton, had the effect of continuing the life of the servitude for an indefinite period—subject, however, to the prescription established by law." 200 La. at p. 628; 8 So. (2d) at p. 623.

Bodcaw Lumber Co. v. Magnolia Petroleum Co., 167 La. 847, 120 So. 389, also recognized the right to stipulate a contractual limitation of term:

> ". . . The time limit of fifteen years, within which the Bodcaw Lumber Company, or its successors or assigns might have extracted and removed the oil and gas from the land, was inserted in the contract, not for the purpose of extending the time within which the right might be enjoyed, but for the purpose of limiting the time in which it might be enjoyed." 167 La. at p. 850; 120 So. at p. 390.

The Court of Appeals for the Fifth Circuit has recently, in a case coming up from Louisiana, rejected a contention similar to Leiter's. In *Texas Co. v. Crawford*, 212 F. (2d) 722, that Court had before it a mineral reservation which was stipulated to endure for a period of twenty-five years and as long thereafter as oil or gas might be produced. By two subsequent written acknowledgments, executed ten and twenty years later, the owners of the land had waived the Louisiana prescription of ten years non-user, and kept the mineral rights alive; but these acknowledgments and waivers stated that their effect was limited to the original twenty-five year term only. After

the twenty-five year term expired, the holder of the mineral rights contended that, because the legal prescription in Louisiana is ten years, the twenty-five year term was to be written out of the picture. But the Court, through Judge Hutcheson, rejected that contention, pointing out the great difference between contractual provisions limiting the duration of a mineral servitude, and the completely separate legal prescription of ten years non-user:

> "We think this theory of defendants, which erroneously treats the acknowledgments of the interruption of the liberative prescription as operating to grant new servitudes inconsistent with the contractual limits of the original reservations, instead of, as they really do operating to free the contractually granted servitude from the prescription which would otherwise extinguish it, will not at all do. Resulting as it does from treating as a limitation upon the right of contracting as to servitudes the extinguishment of the servitude by the operation of the liberative prescription, it runs counter to the teachings of general jurisprudence with respect to the difference between the meaning and effect of a contract and the effect on contracts of statutes of prescription and limitation. It is in direct conflict with the law of Louisiana as it is stated in cases and text books." 212 F. (2d) at p. 725.

Thus, Leiter's reserved mineral rights expired under the provisions of the contract which he made and entered into with the United States. There is no question of applying any prescription or limitation established by Louisiana law. While Leiter Minerals alleges that Louisiana Act 315 of 1940 (now R. S. 9:5806) supports its cause

of action, all that statute did was to remove the legal limitation of ten years non-user against mineral reservations in sales to the United States. It simply declared such reservations to be "imprescriptible". (Appendix A, p. 53). But the elimination of the prescription of ten years non-user could not, and did not, alter or strike down contractual provisions in existing agreements whereby mineral servitudes had been established for limited periods of time only.

Moreover, Thomas Leiter knew and recognized that his reserved mineral rights would expire on April 1, 1945, because, on October 28, 1943, he assigned all of those rights to Humble Oil & Refining Company and entered into a separate agreement with Humble predicated upon April 1st, 1945 as the expiration date. (Ex. U. S. 16, R. 176, 57). Under the terms of such 1943 agreement, Humble was authorized to apply to the United States, before April 1st, 1945, for mineral leases on the lands Leiter had sold to the United States, and coincidentally therewith Humble was authorized to release to the United States Leiter's reserved mineral rights in advance of the April 1st, 1945 expiration date. In return, Leiter was to receive an overriding royalty on the United States mineral leases. Although Humble was in fact unable to get United States mineral leases, there was no conveyance from Humble back to Thomas Leiter until November 18th, 1952, long after The California Company had established production. (Ex. U. S. 15, R. 118, 50). The circumstance of the 1943 agreement and the long delay in effecting a reconveyance demonstrate Leiter's complete understanding and acceptance of April 1st, 1945 as the date upon which all his reserved mineral rights ran out.

From what has been said, it will be seen how incongruous is the attempt which Leiter has heretofore made to rely on *United States v. Nebo Oil Company*, 190 F. (2d) 1003 (C. A. 5). That case dealt with a perpetual mineral servitude which would have been good against the United States for all time to come, unless prescribed by the limitation of ten years non-user imposed by Louisiana law. Pursuant to the well-known rule that statutes of limitation are remedial and can be altered by the Legislature at will, the Court of Appeals held that Louisiana Act 315 of 1940 could, and did, validly remove such legal prescription, or limitation, of ten years non-user. By that holding, the Court gave effect to the mineral reservation in *Nebo* **as it was written,** and recognized the servitude as having perpetual duration. There were no contractual conditions on the exercise of the servitude maintained in the *Nebo* case, no contractual provisions for its extinction, no limitations to twenty-five acres around each producing well, no limitations to successive five-year periods, and no requirements of fifty days mineral operations, such as there are in Leiter's mineral reservation. The contract provisions of the servitude before the Court in *Nebo* are quoted herewith:

> "'. . . It is intended hereby to confer upon Vendee **absolutely and without limit for time of their enjoyment** any and every right, title and interest which this Vendor has to the oil, gas and sulphur within said lands, including the exclusive right to extract and produce same. And the rights herein conferred may be assigned, transferred or leased, in whole or in part, by Vendee or under its authority and shall inure to the benefit of Vendee, its suc-

cessors and assigns, and lessees hereunder, it being expressly stipulated that none of said rights in any of said lands shall be **prescribed** unless there shall elapse a full period of ten (10) years in which there shall be no exercise of any of the foregoing rights or user of any of the lands aforesaid under and by virtue hereof'." 90 F. Supp. at p. 78. (Emphasis added).

So, then, the mineral rights there involved were stipulated to be enjoyed in perpetuity; and the tail-end provision expressly declared that the servitude was never to expire unless by operation of the prescription of ten years non-user under Louisiana law. When that legal limitation of ten years non-user was removed by Act 315 of 1940, the mineral rights could no longer become prescribed.

That is a wholly different situation from the reservation of Leiter in his sale to the United States. Leiter's mineral rights were to expire, by express stipulation in Leiter's contract of March 14, 1935 and its deed of December 21, 1938, on April 1, 1945 unless mineral operations were conducted to commercial advantage for an average of fifty separate days per year during the three year period immediately before April 1, 1945; and even if this prerequisite were met, his mineral rights could be extended **only** as to twenty-five acre blocks around each well or mine producing or drilling on the expiration date. The contract further said:

"Provided that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the op-

eration has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States." (Ex. U. S. 1, R. 66, 46; Ex. U. S. 5, R. 82, 47).

This wording leaves no room for doubt. Leiter's reserved mineral rights expired pursuant to the plain terms of his contract with the United States.

The United States District Court for the Western District of Louisiana has upheld the rights of the United States under a similar reservation.

In *Hickman v. United States*, 135 F. Supp. 919 (W. D. La.), the United States was sued by adverse claimants to mineral rights in lands other than Leiter's but subject to a mineral reservation substantially similar to Leiter's. This Hickman reservation occurred in a deed to the United States on November 13, 1930, and, just as in Leiter's case, the mineral rights were reserved for a ten year period subject to a limited right of extension only if specific and stringent operational requirements were met. These requirements were: (a) the reserved mineral rights had to have been operated to commercial advantage within the last five years of the ten year reservation; (b) if that prerequisite were met, the right to mine might be extended for successive periods of five years each but only so long as operations during the last preceding five year period had been conducted for an average of 120 days; and (c) any and all extensions would be limited to the land section or sections in which the operations had been actually carried on during the last five years. All of these

limitations were, of course, comparable to Leiter's. At the end of the Hickman reservation it was also stated, just as in Leiter's, that if the requisite operations were not carried on, complete fee in the land would become vested in the United States at the end of the ten year reservation.

The adverse claimants in *Hickman* sued the United States under the Tucker Act, seeking to recover money judgment for rentals received by the United States under a certain mineral lease which it had executed. The first opinion of the United States District Court, reported at 135 F. Supp. 919, held there was no jurisdiction of such suit against the United States:

> "It is obvious that plaintiffs here seek to recover on the basis of contracts 'implied in law'. Were it not for the Louisiana Legislature having adopted Act 315 of 1940, the mineral reservation made by plaintiffs' ancestors would have expired by its own terms on November 13, 1940. . . ." 135 F. Supp. at p. 924.

Subsequently, the plaintiffs in *Hickman* moved to re-argue and re-submit, and the District Court rendered a further opinion in which Judge Dawkins, Jr., stated:

> "Contrary to the allegations of their complaint, and the argument advanced in their original brief, plaintiffs now say they stand, not on Act 315 of 1940, but upon the original contract, the deed to the Government in which the minerals were reserved. If this is so—if they actually have abandoned their reliance upon the Legislature's having extended vicariously the life of the servitude—they fail to state a claim upon which relief can be granted, because

the reserved mineral interest expired, was extinguished **by its own terms,** on November 13th, 1940, ten years from its original date.

"If they rely upon the contract **and** the Statute, which they actually are doing, this Court has no jurisdiction because the express terms of the contract, limiting the life of the servitude to ten years in the absence of development, would be rendered nugatory by the Act of 1940, **without the Government's consent:** a quasi-contract." 140 F. Supp. at p. 760.

This decision fully sustains the position of the United States and its mineral lessees with regard to the termination of the Leiter reservation.

The Plaquemines Parish Court patently erred in ruling that only Leiter's right to enter expired on April 1, 1945:

(1) The reservation expressly stated that "complete fee in the land" would become vested in the United States at April 1, 1945, thereby leaving no room for any outstanding rights in Leiter.

(2) If one cannot enter, one cannot mine and remove.

In Plaquemines Parish, the State Court has rendered an opinion overruling the exceptions filed by the United States' mineral lessees. (Ex. U. S. 15, R. 145, 50). Such exceptions in Louisiana procedure are comparable to, and serve the same purpose as, a preliminary motion to dismiss under Federal practice. Thus, the State Court's ruling was interlocutory and was based solely on the allegations of Leiter's complaint. Contrary to the authorities set

forth in this brief, the Plaquemines Parish Court held that the suit before it was not against the United States; that the United States was not an indispensable party; and that Leiter's complaint stated a good cause of action.

A decision by a state court of this character is not binding in the Federal Courts, *King v. United Commercial Travelers*, 333 U. S. 153, nor could this particular ruling even be of persuasive value since plainly contrary to Louisiana appellate decisions and well settled principles of Louisiana law. (Pages 11-34, above). In part, the State Court's conclusions were founded on the false factual premise that the provisions of the deed to the United States of December 21, 1938, when referring to "the ten year period of reservation", were inconsistent with the stipulated expiration date of April 1, 1945. As reviewed earlier in this brief, the December 21st, 1938 deed was executed by Thomas Leiter in compliance with a prior agreement of sale entered into with the United States on **March 14th, 1935,** from which earlier date the ten year contractual period was thoroughly consistent with the expiration date of April 1, 1945. (Ex. U. S. 1, R. 62, 46). Leiter's State Court complaint wholly failed to mention this March 14th, 1935 agreement, and the State Court was unaware of it. (Ex. U. S. 15, R. 101, 50). In petitioner's brief in this Court the same erroneous argument is continued, without mention of the contract of March 14th, 1935. (Brief, p. 39. fn. 39).

And whereas the State Court held that Leiter's right to enter for the purpose of mining and removing expired April 1st, 1945, nevertheless leaving Leiter's right to mine and remove untouched, this distinction is insupportable. (Ex. U. S. 15, R. 148, 50). How one could mine

and remove without entering for the purpose of mining and removing is not suggested in the opinion of the Plaquemines Parish Court. Impossible upon its face, the distinction could never be reconciled with the clause of the mineral reservation which says:

> "Provided, that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, **the right to mine shall terminate, and complete fee in the land become vested in the United States.**" (Ex. U. S. 1, R. 66, 46; Ex. U. S. 5, R. 82, 47). (Emphasis added).

So there is no such distinction as found by the Plaquemines Parish Court. The words "complete fee" admit of no other conclusion than that Leiter had nothing left.

IV.

THE INJUNCTION BELOW WAS A PROPER REMEDY:

The prohibition of Section 2283 of the Judicial Code does not apply to the United States. The injunction below is supported by *United States v. Lee, Land v. Dollar*, and numerous precedents in the lower Federal Courts. No rule of comity requires denial of Federal jurisdiction in favor of the State Court so that it can proceed against property of the United States. Nor has the State Court ever taken this property into its possession or custody.

In *United States v. United Mine Workers*, 330 U. S. 258, this Court held that the Norris-LaGuardia Act, prohibiting Federal Courts from issuing injunctions in

labor disputes, was not applicable to the United States. The reasoning was that the statutory prohibition could not be held to apply to the sovereign without express indication that the sovereign was included. The Norris-LaGuardia Act said:

> "No court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute . . ." 47 Stat. 70; 29 U. S. C. § 101.

The principle of the *United Mine Workers* case is equally applicable to the prohibition under Section 2283 of Title 28 of the U. S. Code, which provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 62 Stat. 968.

Injunctions restraining similar actions in state courts have been approved in the following cases: *Brown v. Wright*, 137 F. (2d) 484 (C. C. A. 4); *United States v. Inaba*, 291 Fed. 416 (E. D. Wash.); *United States v. McIntosh*, 57 F. (2d) 573 (E. D. Va.), appeal dismissed, 70 F. (2d) 507 (C. C. A. 4); *United States v. Babcock*, 6 F. (2d) 160 (D. C. Ind.) modified 9 F. (2d) 905 (C. C. A. 7); *United States v. Cain*, 72 F. Supp. 897 (W. D. Mich.); *United States v. Phillips*, 33 F. Supp. 261 (N. D. Okla.), vacated on other grounds, 312 U. S. 246; *United States v. Taylor's Oak Ridge Corporation*, 89 F. Supp. 28 (E. D. Tenn.)

All these lower Federal decisions were rendered at a time when Section 2283 or its predecessor was in effect. No case denies to the United States Courts the right to issue such an injunction at the behest of the United States. While petitioner now contends that Section 2283 prohibited the injunction below, its petition for certiorari stated that this statute was "not squarely involved" and was only "incidentally involved" because of the principle on which it was based. Whether petitioner saved the point or not, its present argument is based solely upon the decision of this Court in *Amalgamated C. W. of America v. Richman Bros.*, 348 U. S. 511, which case is clearly inapplicable because the United States was not a plaintiff nor was it even a party thereto. Nothing contained in the *Richman* decision indicates that, in this Court's views, Section 2283 operates against the United States. The reenactment of the Statute, after all the above cited lower Federal decisions, into the Judicial Code of 1948, could only constitute an acceptance of their interpretation.

Whereas petitioner maintains that the underlying policy of Section 2283 should apply with greater force against the United States, the opposite is true. Petitioner concedes, as it must, that no decree in Plaquemines Parish could be *res judicata* against the United States. (Brief, p. 30). Ultimately, then, petitioner would allow the United States its day in court. It would be far more distasteful then to have to enjoin and undo a state court judgment than it would be now to prevent the abortive state court judgment from ever happening in the first place. Thus, the injunction below actually serves the policy of Section 2283 by minimizing the conflict between the two Courts.

The Plaquemines Parish action is a suit against the United States. (Pages 8-15, above). No court, state or Federal, has jurisdiction to render judgment against the United States in such a suit without the consent of Congress, not even by way of counterclaim. *State of Minnesota v. United States*, 305 U. S. 382; *United States v. N. Y. Rayon Importing Co.*, 329 U. S. 654; *United States v. Shaw*, 309 U. S. 495. Congress has never authorized such an action against the United States, either in the state or Federal Courts. Therefore, the State Court had no proper jurisdiction, and since the United States District Court was exclusively vested with the right to make a final and binding determination on the United States' title, the injunction below was proper and necessary.

While Leiter relies on *United States v. Lee*, 106 U. S. 196, and *Land v. Dollar*, 330 U. S. 731, both those litigations are good authority for the issuance of the injunction below. In *Lee* and *Dollar* this Court held that actions, because restricted to possessory rights and not necessitating adjudications on title, were permissible against persons holding custody of property for the United States. As heretofore shown, Leiter's State Court action is not limited to possession, and must decide upon title. (Pages 8-10, above). But even if, contrary to Louisiana law, Leiter's State Court suit could be so limited, both *Lee* and *Dollar* are precedents for the subsequent filing by the United States of its bill to quiet title and for the issuance of the injunction below to preserve the *status quo*. In *United States v. Lee*, this Court said:

> "The United States may proceed by a bill in chancery, to quiet its title, in aid of which, if a proper case is made, a writ of injunction may be obtained." 106 U. S. at p. 222.

In the *Dollar* litigation, possession of the shares of stock there in dispute was awarded the Dollars by the District of Columbia Courts. 184 F. (2d) 245; 188 F. (2d) 629. This occurred subsequently to the original decision by this Court in *Land v. Dollar*, 330 U. S. 731, permitting a possession suit, but not a title suit, to be maintained by the Dollars. The United States then instituted a bill to quiet title in the Northern District of California and that Court issued a temporary injunction restraining the Dollars, until the title suit could be determined, from exercising the possession previously awarded them in the District of Columbia. 97 F. Supp. 50. The Court of Appeals for the District of Columbia thereupon issued an injunction against the United States officials, restraining them from availing themselves of the California injunction, and found them in civil contempt for bringing the California litigation. 190 F. (2d) 623. This Court, in a *per curiam*, stayed the decree of the Court of Appeals for the District of Columbia and granted certiorari, pointing out that the judgment in the District of Columbia possession litigation was not *res judicata* against the United States on the question of title. 341 U. S. 737. Thus, this Court appears to have given express approval to the California injunction. (No further decision was rendered afterward in *Dollar* since the writ of certiorari was dismissed as moot. 344 U. S. 806).

The *Lee* and *Dollar* cases therefore support the issuance of the District Court's injunction. While Leiter invokes here a rule of comity, claiming that the Federal jurisdiction should yield to the State Court on the ground that the State action was prior in time and was either *in rem* or *quasi in rem*, such rule of comity has no application except where the choice of jurisdiction between state and Federal courts is otherwise equal. Here that is not true. Moreover, Leiter's State Court complaint is not, under the decisions of this Court, *in rem* or *quasi in rem* as contended by Leiter. The State Court has never undertaken to acquire possession of the property, nor is it required by law, or even asked, to do so. In *Mandeville v. Canterbury*, 318 U. S. 47, it was held that suits between private parties to declare or determine title to real property, whether in the state or Federal courts, do not give the first court such jurisdictional control over the property as to preclude other litigation:

> ". . . Maintenance of the suit in the district court does not require possession of the property by that court or require it to assume supervisory or administrative control of it even through exercise of its control over the trustees, at least until it has determined that respondent had some interest in the property, nor has the court undertaken to exercise such control. . . . So far as the suits in either the federal or the state courts seek an adjudication of the interests of the parties in the land, it cannot be said that the federal court has exclusive jurisdiction." 318 U. S. at pp. 49, 50.

And even if the State Court action were *in rem*, this could not prevent the United States Courts from exercising

jurisdiction to protect the interests of the United States. If, in a state court action, a Federal post office building, a custom house, or an important defense facility were seized and taken into custody, the United States Courts could not, by such device, be prevented from exercising the necessary authority to protect the rights and property of the United States Government.

No purpose would be served by petitioner's proposed abandonment of jurisdiction to the State Court. Louisiana Act 315 of 1940 clearly does not apply and the impossible interpretation which Leiter advocates would be unconstitutional against the United States. This case presents the reverse of the "doctrine of abstention" cases relied on by petitioner.

This brief has shown that Leiter's mineral reservation expired on April 1, 1945 in accordance with its own terms, and that Louisiana Act 315 of 1940 has no bearing. (Pages 19-32, above). Such statute did not purport to strike down and annul the provisions of the United States' contract, and any suggestion to the contrary is entirely wanting in substance. Petitioner's brief nevertheless argues that the State Courts should be given the chance to interpret the Statute so as to see if they could hold it did attempt to alter and strike down the contractual provisions of the United States' purchase agreement; and petitioner concedes that this interpretation, if it were made, would raise serious constitutional questions. (Brief, p. 40).

Such contention by Leiter is anomalous. If the State Courts agreed with the position of the United States and its mineral lessees that the State statute has no application, Leiter's claims are without merit. If, on the other

hand, the State Courts were to hold, as Leiter suggests they be given the opportunity, that Act 315 of 1940 did attempt to alter and strike down the provisions of the United States' contract, such interpretation would impair the obligation of the contract and divest the vested rights of the United States. In either event, petitioner could not succeed. No purpose would be served by sending this case to the State Courts solely to give those courts the opportunity to render an unconstitutional interpretation of Louisiana Act 315 of 1940.

This case is the exact reverse of the "doctrine of abstention" cases relied on by petitioner. In those cases this Court gave to state courts first opportunity to interpret their statutes in the hope Federal Constitutional questions would thereby be eliminated. Here, however, petitioner asks that the State Courts be given such first opportunity for the sole and only purpose of creating serious Federal Constitutional questions. (Petitioner's Brief, pp. 39, 40). For, the only possible State interpretation of Act 315 of 1940 which Leiter can propose to aid itself would be clearly unconstitutional against the United States.

Leiter's position is even more of a paradox in the light of *Whitney National Bank of New Orleans v. Little Creek Oil Co.*, 212 La. 949, 33 So. (2d) 693. There, the highest court of Louisiana dismissed an interpleader suit and refused to consider the constitutionality of this same statute, Act 315 of 1940, because the United States was not a party and could not be made one. The constitutional questions raised in that case were different from the ones presently engendered by Leiter, because the mineral servitude of Nebo Oil Company, there before the Court, was

perpetual. (See discussion of *United States v. Nebo Oil Co.*, 190 F. (2d) 1003 (C. C. A. 5), p. 30, above). Nevertheless, the principle is the same and in the *Little Creek* case the Louisiana Supreme Court said:

> ". . . the United States is the only party which has an interest in urging the unconstitutionality of the statute, and the judgment wherein the lower court found the statute to be applicable and constitutional and provided that nothing therein was to be construed as res judicata as against the United States, was improper without the government being a party hereto." 212 La. at pp. 963, 964; 33 So. (2d) at p. 698.

That decision puts petitioner in the impossible position of asking this Court to remit to the Louisiana courts a case over which those courts have held they cannot take jurisdiction.

United States v. Bank of New York & Trust Co. did not involve a suit against the United States and cannot be made the basis for compelling the United States to litigate the title to any of its properties in any state court selected by an adverse claimant.

Leiter Minerals relies upon *United States v. Bank of New York & Trust Company*, 296 U. S. 463, but the reference does not withstand analysis. In *Bank of New York & Trust Company*, the Superintendent of Insurance for the State of New York was attempting to liquidate security deposits made by Russian insurance companies many years before any claim of the United States to the funds arose. Indeed, these deposits were made prior to

1918, whereas the claimed assignment of funds to the United States by the Russian Government did not occur until 1933. Thus, the Superintendent of Insurance for the State of New York did not come into possession of the funds adversely to the United States. This Court expressly decided that the liquidation proceedings in the State Court were not a suit against the United States and that the United States, in asserting its claim to funds which were already in custody of the Superintendent, would not be going into the State Court as a defendant.

In the case at bar, however, there can be no question that the suit in Plaquemines Parish is already against the United States. (Pages 8-15, above). Whereas the Superintendent of Insurance in *Bank of New York & Trust Company* did not come into possession of his funds adversely to the United States, the plaintiff in the Plaquemines Parish suit can only establish its claimed rights adversely to the United States. It is the United States which now has, and for many years has had, possession of these mineral rights.

In the *Bank of New York & Trust Company* case, the Superintendent of Insurance was not trying to take the funds away from anyone; he wanted to distribute them to their rightful owner. But in the Plaquemines Parish case, the very object of the litigation is to take the mineral rights away from one specific party, the United States, and invest them in another.

Using the *Bank of New York* case as a basis, petitioner argues that the United States must go into Plaquemines Parish to defend its interests and urges that, having

got there, the United States would not be a defendant after all. It proposes that the United States then be labelled an intervenor in order to maintain the State Court's jurisdiction. But a mere change in nomenclature could not help, as the United States would still be the real defendant in the State Court litigation, the announced purpose of which is to adjudicate title adversely to, and take possession away from, the United States. (Pages 8-11, above). If the United States were forced to go into such litigation, it could not be appearing in any capacity other than as a defendant.

Leiter's argument here is inconsistent within itself. The predicate of Leiter's motion to stay the United States' suit in the Federal Court has to be that the United States is, for practical purposes, already a defendant in the State Court action, yet Leiter inconsistently argues in brief that should the United States be required to intervene in that case, it would not be a defendant. This unrealistic and contradictory position is assumed in a hopeless attempt to avoid the line of authority now reviewed.

This Court has repeatedly decided that officials of the United States have no power to appear in and defend a suit against the United States, brought without the consent of Congress; and where United States officials have in fact appeared in, and defended, such actions, the judgments have been held void. In *Carr v. United States*, 98 U. S. 433, the United States filed a bill to quiet title to certain property which had been the subject of eviction proceedings in a state court against employees of the United States. It was held that the state eviction judgments were no estoppel against the United States, even though United

States officials had appeared in and defended the state court litigations. And this Court maintained the title of the United States notwithstanding the decrees in the state court.

Stanley v. Schwalby, 162 U. S. 255, is another instance where United States officials were held powerless to bind the United States through their participation in state court litigation. These two cases, *Carr* and *Schwalby*, are the foundation of a series of later decisions of similar purport. In *United States v. N. Y. Rayon Importing Co.*, 329 U. S. 654, this Court said:

> ". . . It has long been settled that officers of the United States possess no power through their actions to waive an immunity of the United States or to confer jurisdiction on a court in the absence of some express provision by Congress." 329 U. S. at p. 660.

In *United States v. Shaw*, 309 U. S. 495, the United States filed claim in a state court probate proceeding. Counter claim was made and judgment rendered thereon. This Court held that the judgment on the counter claim was wholly invalid since it was a suit against the United States, for which no consent had been given. *United States v. U. S. F. & G. Co.*, 309 U. S. 506, held that judgment entered against the United States on a cross claim was void. And *Minnesota v. United States*, 305 U. S. 382, held there was no jurisdiction over an expropriation suit against the United States even after the United States officials had appeared in the action and removed it to the Federal Courts.

These authorities establish that any judgment the Plaquemines Parish Court might render would ultimately have to be held void as against the United States, whether representatives of the United States appeared in such suit or not.

The sovereignty of the United States under our Federal system of government requires that title to the national properties be litigated in, and, where necessary, protected by, the United States Courts.

Petitioner proposes a method whereby the United States could be required against its will to submit any of its properties to suit in the state courts. Even if all the precedents reviewed in this brief did not exist, Leiter's proposed surrender of sovereignty by the United States to the Plaquemines Parish Court would be, as an initial proposition, incompatible with our Federal system of government.

The answers to the following would weigh most heavily against submission of the Federal Government's property to decision in the state courts: Would there be a standard form of procedure in the state courts or would there be forty-eight different sets of laws, procedures and remedies? Would the United States have to post bond in order to have its supersedeas in the state courts? Would the United States be hampered in the performance of its functions, and subjected to possible burdensome and harassing litigation in the state courts? By what means are the state judges selected and what assurance would there be of complete independence of action? Would the state courts be, at times, possibly subject to local influence not always consistent with the national interest?

The Constitution recognized the effect of local influence by extending the judicial power of the United States to diversity cases. In *Martin v. Hunter's Lessee*, 1 Wheat. 303, this Court observed:

> "The constitution has presumed (whether rightly or wrongly we do not inquire) that state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, the regular administration of justice." 1 Wheat. at p. 347.

Since the interests of a single citizen of another state were accorded protection in the Federal courts, the authors of the Constitution must necessarily have assumed that the much greater interests of all the citizens of all the states would be secure against local influence. They must also have known that segments of the country would be, as they sometimes have been, out of sympathy with the policies and position of the national government. In *Tennessee v. Davis*, 100 U. S. 257, this Court said:

> ". . . The legislation of a State may be unfriendly. It may affix penalties to acts done under the immediate direction of the National Government, and in obedience to its laws. It may deny the authority conferred by those laws. The State Court may administer not only the laws of the State, but equally federal law, in such a manner as to paralyze the operations of the government. And even if, after trial and final judgment in the state court, the case can be brought into the United States Court for review, the officer is withdrawn from the

discharge of his duty during the pendency of the prosecution, and the exercise of acknowledged federal power arrested.

"We do not think such an element of weakness is to be found in the Constitution. The United States is a government with authority extending over the whole territory of the Union, acting upon the States and upon the People of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No State Government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it." 100 U. S. at p. 263.

In *Martin v. Hunter's Lessee*, above, it was held that, by necessary implication under the Constitution, the appellate powers of this Court extended to cases in the state courts. And in *Tennessee v. Davis*, above, this Court further held that the right to remove cases from state courts to Federal courts likewise existed by necessary implication under the Constitution. These decisions were founded upon the supremacy clause of the Constitution, and were reached over objection that they violated principles of comity between state and Federal courts.

The case at bar involves an attack in a State Court against property which the United States acquired pursuant to an Act of Congress. (The Migratory Bird Conservation Act, 45 Stat. 1222). This statute could not be the supreme law of the land unless there were an effective

means of protecting the property which the United States acquired under it. The injunction below was necessary for that purpose.

It is no answer to suggest that the ultimate remedy of certiorari lies from the state courts to this Court. Were those holding possession of Government property to be wrongfully evicted in a state court, grave injury might be done at once, as indeed it would in the case at bar. Nor is the remedy of certiorari to a state court equivalent to trial in the Federal Courts from the outset in accordance with standard Federal procedures.

VI.

CONCLUSION.

Petitioner has been out of possession for many years while this property was being developed by the United States' mineral lessees. Petitioner has no investment at stake. If the United States succeeds in establishing its title, but in the meantime Leiter Minerals should secure the eviction of the mineral lessees of the United States in Plaquemines Parish, serious and permanent damage would be done to the United States as owner and to its mineral lessees as operators of the property. The jurisdiction of the United States Courts to determine the title of the United States would not be an effective jurisdiction if, pending their decision, the Plaquemines Parish case were permitted to proceed and wreak havoc to the property. No final and binding decision on the title of the United States can be made by the State Court, where the United States is not present and cannot be made a party. Petitioner acknowledges that a State Court de-

cree in Plaquemines Parish "would not have the effect of *res judicata* against the Government". (Petitioner's brief, p. 30). Continuation of the State Court case could therefore accomplish nothing and the injunction below should be affirmed in order to preserve the *status quo* until the controversy can be decided in the United States Courts, which alone have the power to make a determination which will be final and binding upon all interested parties.

Respectfully submitted,

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APPENDIX "A"

Louisiana Act 315 of 1940

"Section 1. Be it enacted by the Legislature of Louisiana, That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible.

"Section 2. That Act 68 and Act 151 of 1938 and all other laws or parts of laws, general or special, in conflict herewith are hereby repealed."

The above Act was carried into the Louisiana Revised Statutes of 1950, R. S. 9:5806, as follows:

"When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm, or corporation, and by the act of acquisition, verdict, or judgment, oil, gas, or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas, or other minerals or royalties, still in force and effect the rights so reserved or previously sold shall be imprescribable."